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ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DENNIS SONG, DDS, MD, and
TINA VALARIS

Plaintiffs,

vs.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; DR. BRIAN BAST, *In His*
Individual Capacity, DR. JOHN
FEATHERSTONE, , *In His Individual*
Capacity, and DOES 1-50, inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES:

FEDERAL CLAIMS:

1. DEPRIVATION OF FIRST
AMENDMENT RIGHT OF FREE
PUBLIC CONCERN SPEECH
2. RETALIATION IN VIOLATION OF
CIVIL RIGHTS 42 U.S.C. § 1983
MONEL ACTION
3. RETALIATION IN VIOLATION OF
CIVIL RIGHTS DEPRIVATION OF
PROPERTY AND DUE PROCESS
IN VIOLATION OF FOURTEENTH
AMENDMENT U.S.C. § 1983

STATE CLAIMS:

4. 12. VIOLATION CALIFORNIA LABOR
CODE SECTION 1102.5
5. RETALIATION IN VIOLATION OF
HEALTH & SAFETY CODE SECTION
1278.5
6. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS
- 7 GOVERNMENT CODE SECTION 815.2
NEGLIGENCE GOVERNMENT CODE
SECTION 815.2
PUNITIVE DAMAGES

JURY TRIAL DEMANDED

PLAINTIFF DENNIS SONG, DDS, MD, and TINA VALARIS, allege against
DEFENDANTS as follows:

1. PLAINTIFFS DENNIS SONG, DDS, MD (hereinafter “DR. SONG”) is an adult natural person who is and was at all times relevant to this Complaint, a resident of San Francisco County, State of California.

2. PLAINTIFF TINA VALARIS (hereinafter “MS. VALARIS”) is an adult natural person who is and was at all times relevant to this Complaint, a resident of San Francisco County, State of California.

3. DEFENDANT THE REGENTS OF THE UNIVERSITY OF CALIFORNIA operating as the UNIVERSITY OF CALIFORNIA SAN FRANCISCO, SCHOOL OF DENTISTRY (hereinafter “UCSF” or “EMPLOYER”) is a governmental entity.

4. DEFENDANT BRIAN BAST, *In His Individual Capacity*, (hereinafter “DR. BAST”) is an individual employed by UCSF. At all relevant times, DEFENDANT BRIAN BAST is and was the Chair of the Department of Maxillofacial Surgery, a managing agent of the THE REGENTS OF THE UNIVERSITY OF CALIFORNIA.

5. DR. JOHN FEATHERSTONE, *In His Individual Capacity*, is an individual employed by UCSF. At all relevant times, DEFENDANT DR. JOHN FEATHERSTONE is and was the Dean of the Department of Maxillofacial Surgery, a managing agent of the THE REGENTS OF THE UNIVERSITY OF CALIFORNIA.

6. PLAINTIFFS are informed, believe, and thereon allege that at all relevant times, each DEFENDANT was an employer, was a principal, managing agent, partner, joint venture, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other DEFENDANTS, and was engaged with some or all of the other DEFENDANTS in a joint enterprise for profit, and bore such other

relationships to some or all of the other DEFENDANTS so as to be liable for their conduct with respect to the matters alleged in this complaint.

7. PLAINTIFFS are informed, believe, and thereon allege that each DEFENDANT acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each DEFENDANT knew or should have known about, authorized, ratified, adopted, approved, controlled, and/or aided and abetted the conduct of all other DEFENDANTS. As used in this complaint, "DEFENDANT" means "DEFENDANTS and each of them," and refers to the DEFENDANTS named in the particular cause of action in which the word appears.

8. At all times mentioned herein, each DEFENDANT was the co-conspirator, agent, servant, employee, and/or joint venture of each of the other DEFENDANTS and was acting within the course and scope of said conspiracy, agency, employment, and/or joint venture and with the permission and consent of each of the other DEFENDANTS.

9. PLAINTIFFS are informed, believe, and thereon allege that at all times mentioned in this Complaint, DEFENDANTS were the agents and employees of their CO-DEFENDANTS, and in doing the things alleged in this Complaint were acting within the course and scope of their agency and employment and acted in such a manner as to ratify the conduct of their CO-DEFENDANTS.

JURISDICTION AND VENUE

10. PLAINTIFFS bring this action pursuant to the laws of the United States of America. Jurisdiction is founded upon 28 U.S.C. § 1331, as this case involves federal questions of law.

11. Venue is proper in this judicial district because PLAINTIFFS' injuries, damages and harms, including the violation of PLAINTIFFS' civil rights, occurred in this judicial district. Further, one or more of the DEFENDANTS reside, are headquartered and conduct business in this judicial district. DEFENDANTS are subject to suit in this Judicial District and regularly employ 15 or more persons.

GENERAL ALLEGATIONS

12. PLAINTIFFS allege that DEFENDANT THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, operating as the UNIVERSITY OF CALIFORNIA SAN FRANCISCO,

SCHOOL OF DENTISTRY (hereinafter “UCSF” or “EMPLOYER”), DEFENDANT DR. JOHN FEATHERSTONE (hereinafter, DEFENDANT DR. FEATHERSTONE), and DEFENDANT BRIAN BAST (hereinafter, DEFENDANT DR. BAST), through DEFENDANT Employer’s managing agents, discriminated and retaliated against PLAINTIFFS for engaging in protected activity, including their complaints regarding DEFENDANTS’ patients safety, patient substandard care, substandard conditions of the dental school, clear and present danger to patients due to incompetence surgeon providing general anesthesia and doing surgery at the same time; complaints regarding UCSF intentionally refusing to refund to patients excess payments. At all relevant times, PLAINTIFFS were employees and medical providers of DEFENDANTS, acting in the normal course and scope of employment duties with DEFENDANTS.

PARTIES

13. PLAINTIFF DR. SONG is a citizen of the United States of America and is a resident of San Francisco, CA. At all times herein relevant, DR. SONG was a attending surgeon and an employee as a ten (10) year volunteer professor of dentistry at DEFENDANT UCSF SCHOOL OF DENTISTRY, as well as an active financial donor to the school.

14. PLAINTIFF MS. VALARIS is a citizen of the United States of America and is a resident of San Francisco, CA. At all times herein relevant, MS. VALARIS was an employee as the Manager of the Department of Oral & Maxillofacial Surgery at DEFENDANT UCSF SCHOOL OF DENSTRY.

15. DEFENDANT UCSF is a Division of the Government of the State of California and is incorporated under the Laws of the State of California. DEFENDANT UCSF does business in the City of San Francisco under the business name University of California San Francisco. UCSF is located at 707 Parnassus Ave, San Francisco, CA 94143, and the DEFENDANT THE REGENTS OF THE UNIVERSITY OF CALIFORNIA’s business mailing address is 1111 Franklin Street, 12th Floor, Oakland, CA 94607.

16. DEFENDANT DR. JOHN FEATHERSTONE is a citizen of the United States of America and is a resident of San Francisco, CA. At all times herein relevant, DEFENDANT DR. FEATHERSTONE was a managing agent of DEFENDANT UCSF.

1 17. DEFENDANT DR. BRIAN BAST is a citizen of the United States of America and is a
2 resident of San Francisco, CA. At all times herein relevant, DEFENDANT BRIAN BAST was
3 and is a managing agent of DEFENDANT UCSF.

4 **DOE DEFENDANTS**

5 18. PLAINTIFFS do not know the true names and capacities, whether individual,
6 corporate, associate, or otherwise of DEFENDANT DOES 1 through 50 inclusive, and therefore
7 sue these DEFENDANTS by such fictitious names. PLAINTIFFS will seek leave to amend his
8 complaint to allege their true names and capacities when the true names and capacities have been
9 ascertained.

10 **RESPONDEAT SUPERIOR**

11 19. All of the described conduct, acts, and failures to act are attributed to agents and
12 managing agents of DEFENDANT UCSF. Said acts, conduct, and failures to act were within the
13 scope of such agency and employment. At all times relevant herein, each participant was acting
14 within the course and scope of his or her employment and agency.

15 20. Each DEFENDANT, at all relevant times, was acting as the agent and co-conspirator of
16 the other, and each endorsed, ratified, encouraged, agreed with, and took overt acts to carry out
17 and accomplish the illegal conduct, activities and schemes alleged herein. All illegal conduct by
18 managing agents was endorsed, ratified, encouraged and agreed to by each DEFENDANT and
19 was foreseeable, and DEFENDANTS, and each of them, had prior knowledge of said illegal
20 conduct, rendering DEFENDANT EMPLOYER vicariously liable. DEFENDANTS are
21 individually liable for the acts and omissions of each other, based on the facts that each
22 DEFENDANT endorsed, ratified, encouraged, conspired and agreed to the illegal conduct as
23 herein alleged.

24 21. DEFENDANT UCSF's Executive Leadership Team and Board Members, and each of
25 them, intentionally, willfully, and negligently failed to provide any oversight over DEFENDANT
26 UCSF and its managing agents to ensure compliance with all Federal and State laws, including,
27 but not limited to, laws mandating the timely, correct payment and record-keeping of employees'
28 wages; laws mandating that employees work in an environment free of discrimination; and laws

mandating that employers refrain from retaliating against employees who participate in protected activity, such as employees complaining about the untimely and inaccurate payment of wages. DEFENDANT UCSF's Executive Leadership Team and Board Members, and each of them, willfully failed to promptly collect and withhold taxes; and failed to pay and failed to withhold income and employment taxes, including social security taxes, and other Federal Payroll tax requirements.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. PLAINTIFFS have exhausted administrative remedies by filing charges of retaliation with UCSF, and with appropriate federal and state agencies, including the EEOC and the DFEH. Further, PLAINTIFFS will file an amendment to this lawsuit within the statutory period following the issuance of the Right-to-Sue Letters from the EEOC and DFEH.

WORKERS' COMPENSATION EXCLUSIVITY DOES NOT APPLY

23. Each and every wrongful, injurious, intentional, willful, discriminatory, harassing act and failure to act by DEFENDANTS were not normal incidents of employment and were outside the scope of the employment bargain. Thus, the Workers' Compensation exclusive remedy set forth in California Labor Cod § 3600 et seq. will not preempt or bar PLAINTIFFS' right to recover for damages set forth herein.

DAMAGES

24. As a direct and legal result of DEFENDANTS' conduct as set forth herein, PLAINTIFFS have suffered, and continue to suffer, substantial losses in earnings, significant loss of reputation, severe mental, and emotional distress, humiliation, loss of enjoyment of life, misery, inconvenience, anxiety, discomfort, fear, and professional injury, loss of promotional opportunities and other employment benefits, lost wages, attorneys' fees, medical expenses, loss of future earnings and benefits, cost of suit, embarrassment and anguish, all to their economic and non-economic damage in an amount according to proof.

DR. SONG'S STATEMENT OF FACTS

25. On or about July 30, 2007, DEFENDANTS Appointed DR. SONG as an Assistant Clinical Professor, a volunteer position, evidenced by an Appointment Letter.

1 26. On or about July 1, 2012, DEFENDANTS provided to DR. SONG an Accelerated
2 Promotion to Associate Clinical Professor, evidenced by an Appointment Letter.

3 27. DR. SONG was a clinical professor at UCSF for ten years, teaching in the pre-doctoral
4 program, instructing and lecturing to pre-doctoral students and residents in the pediatric dentistry
5 and oral surgery residency programs. DR. SONG also taught a resident teaching curriculum,
6 where he instructed residents on how to teach. DR. SONG based this curriculum on his teaching
7 fellowship program that he did while an oral surgery resident with the School of Medicine.
8 Additionally, DR. SONG taught clinical teaching to third and fourth-year students who were
9 doing surgery. He also was the supervising surgeon or attending surgeon for the entire duration
10 of that time. Further, DR. SONG gave four (4) lectures per year for the oral surgery department,
11 two on nitrous oxide, and two on basic oral surgery for students. He also taught in the division
12 of pediatric dentistry, teaching three (3) classes annually, as well as teaching how to do surgery
13 and treatment of various aspects of pediatric dentistry. DR. SONG shouldered quite a workload
14 for DEFENDANTS UCSF.

15 28. On August 7, 2015, DEFENDANT DEAN FEATHERSTONE invited DR. SONG to
16 serve on his Dean's Council. This communication is confirmed in an email dated 08/07/2015.

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18 **DR. SONG'S COMPLAINTS OF SUBSTANDARD PATIENT CARE, CONDITIONS OF**
19 **THE FACILITY, AND THREATS TO PATIENT SAFETY**

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21 29. On May 7, 2015 DR. SONG initiated a meeting and met with Dr. Anthony Pogrel,
22 the previous and transiting Chair of the Department, to discuss concerns about patient care and
23 safety and other problems in the department, seeking help to correct those issues and concerns.
24 This meeting was confirmed in an email. Following this meeting, DEFENDANTS failed to take
25 any corrective action.
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1 30. On June 3, 2015, DEFENDANTS' clinical department professors and manager
2 informed DR. SONG in an email communication that his performance and student evaluations
3 were excellent.

4 31. On June 16, 2015, DR. SONG met with DEFENDANT DEAN
5 FEATHERSTONE to discuss possible paying positions in administration, with the expressed
6 goal of addressing and correcting many of the substandard patient safety concerns. Following
7 this meeting, DEFENDANTS failed to take any corrective action.

8 32. During June 2015, another medical provider, Dr. Berger, in an email on June 8,
9 2015, reported problems of patient care and safety and problems with students being
10 inadequately trained in the clinic.

11 33. During the year of 2016 through 2017, DR. SONG complained to management
12 about substandard patient care, substandard conditions of the dental school and threats to patient
13 safety. He communicated descriptive details of these complaints to DEFENDANTS BAST,
14 FETHERSTONE, and to the chancellor via several emails. He complained of serious and
15 various substandard patients' care. He explained that students' documentation and charting were
16 extremely poor, disrupting the continuity of patient care, emphasizing that due to this lack of
17 proper charting there was no way to know what had happened during previous patients' visits.
18 He emphasized that the continuity of patient care absolutely depends upon thorough and adequate
19 charting. DEFENDANTS ignored these complaints and failed to make changes to protect patient
20 safety.

21 34. On May 8, 2016, DR. SONG, via email, informed DEFENDANTS DR. BAST
22 and DR. FEATHERSTONE of problems, patient risks, and safety issues in the clinic and
23 department.
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1 35. On October 5, 2016, DR. SONG communicated by email to Dr. Thuan Le, head
2 of the residency program in the Pediatric Dentistry Division of his interest in teaching in the
3 Pediatric Dentistry Division.

4 36. On April 5, 2017, Dr. Perkins, faculty and clinic manager, admitted and
5 confirmed the many complaints, from DR. SONG and other doctors and staff, that students and
6 patients were being left unattended by faculty. This admission of substandard patient care and
7 safety is memorialized in an email dated "4/5/2017". Despite this admission, DEFENDANTS
8 failed to take affirmative corrective actions to protect the safety of patients.
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10 37. On April 7, 2017, DR. SONG complained in an email to Chancellor Hawgoods of
11 problems of threats to patients' safety and care. DEFENDANTS also asking DR. SONG to sign
12 off on coding that wasn't true. In regards to billing, DR. SONG was told that he could not
13 change the procedure codes that were assigned in the treatment plan and to just sign them off.
14 DR. SONG refused, advising DEFENDANTS CLEARLY: **"In regards to billing, I was told
15 that I could not change the procedure codes that were assigned in the treatment plan and to
16 just sign them off. I CLEARLY stated we need to bill what was done during a patient visit
17 irrespective of what was planned, otherwise it would be fraud. I refused to sign off and I
18 was told that I would get in trouble for it."**
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21 38. On April 10, 2017 Chancellor Hawgoods responded by email to DR. SONG,
22 indicating that DEFENDANT DEAN FEATHERSTONE would get back to him regarding the
23 complaints and concerns about patient care and safety. Neither DEFENDANT
24 FEATHERSTONE nor DEFENDANT BAST responded to these complaints.
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1 39. On April 10, 2017, DEFENDANT BAST sent an email acknowledging DR.
2 SONG for the first time and confirming that DR. SONG was taking off some time away from the
3 school.

4 40. On April 11, 2017, DR. SONG received notice in an email from the Pediatric
5 Dentistry Department that he had been approved for an appointment as a professor in Pediatric
6 Dentistry.

7 41. On April 14, 2017, DEFENDANT DEAN FEATHERSTONE responded to DR.
8 SONG, informing DR. SONG to expect a detailed response.

9 42. On April 21, 2017, DR. SONG received an email from Pediatric Dentistry, stating
10 that he needed approval from DEFENDANT DR. BAST to transfer.

11 43. On May 10, 2017 DEFENDANT DEAN FEATHERSTONE demanded that DR.
12 SONG keep quiet, and not to speak about the problems in the clinic.

13 44. On June 14, 2017 DR. SONG again emailed Chancellor Hawgoods about the
14 problems in the clinic, and complaining that DR. BAST had refused to renew his faculty
15 appointment.

16 45. DR. SONG also complained to DEFENDANTS that he was spending time re-
17 doing entire examinations, having to teach students how to conduct an interview with a patient,
18 when the purpose of the clinic is to teach residents how to perform surgery, not to re-teach basic
19 fundamentals. He was having to reteach fundamentals such as proper charting, documentation
20 and consulting with previous providers to maintain current patients care needs and status. He
21 explained to DEFENDANTS that he had found unsigned patients' charts, leaving no indication
22 of who had performed the treatment, and that this created unsafe patient care because no
23 subsequent provider would have any idea of who had done the clinical documentation. The lack
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1 of proper documentation required DR. SONG to have to go back over the chart and re-document
2 the treatment, wasting his time in the clinic. He also complained to DEFENDANTS that the
3 computer system was not adequate and offered to fix it on his own time, pointing out his
4 expertise in IT. DEFENDANTS ignored these complaints and failed to make changes to protect
5 patient safety.

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7 46. DEFENDANTS blocked DR. SONG from upgrading the computer to comply
8 with patient safety standards. The fear that patient safety was being compromised, coupled with
9 other substandard conditions of the dental school and the lack of corrective actions from
10 DEFENDANTS raised DR. SONG'S stress level to the point he began to fear that his dental
11 license was in jeopardy from legal exposure for dental malpractice. DEFENDANT BAST
12 refused to respond to DR. SONG's email complaints, and the one time DEFENDANT BAST
13 met with DR. SONG, he told DR. SONG that he was going to change the existing policy of not
14 competing with private practitioners in San Francisco, especially alumni. "That's all going to
15 change", DR. BAST pointedly stated to DR. SONG. As a private practitioner and alumni, DR.
16 SONG perceived DR. BAST'S STATEMENT as a direct threat that now the dental school was
17 going to compete directly against him and other alumni.
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20 47. DR. SONG was baffled and disappointed, thinking, "Why do you think I'm the
21 competition? I am here because I'm trying to help. So why in the world would you talk to me like
22 this?" DR. SONG complained that he would show up at the clinic, and without any notice to him
23 the clinic was closed after he had re-arranged his patients, causing him financial loss.
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25 48. DR. SONG sent an email to DR. BAST, dated April 7, 2017, expressing:
26 "Concerns for patient safety and care, disorganized system and structure and lack of appropriate
27 training of students". He was communicating about the inadequate dental student education,
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1 informing DR. BAST that the students were not taking care of patients appropriately. They didn't
2 have the knowledge base, and there was inadequate training for the students. They could not
3 even present properly to faculty. He would not feel safe having some of them graduate from
4 dental school. DR. SONG was explaining to DR. BAST that management was ignoring basic
5 fundamentals of pre-operative evaluations and addressing surgical concerns.
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7 49. DR. SONG offered solutions to enhance patient safety, even spending time
8 remotely accessing the computer system so he could help to sign and complete charting and
9 paperwork. DEFENDANTS denied DR. SONG'S additional requests to remotely access the
10 computer system to remedy many of the problems in the system. The excuse for denying DR.
11 SONG remote access was that the system cost \$1200, ignoring the value of DR. SONG'S time
12 and the fact that DR. SONG is a financial donor, donating far more on an annual basis than a
13 mere \$1200.
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15 50. In his email to DR. BAST, DR. SONG told DR. BAST that the teaching
16 environment had deteriorated to the point that he needed a break because the situation had
17 become so stressful. DR SONG feared and worried about coming in every morning because he
18 didn't know what else could possibly go wrong, realizing that he had no support if anything were
19 to go wrong in the clinic; that there were things he could not control. He could not control what
20 was going on with the system, nor what was going on with the staffing and with the students. He
21 feared that if anything were to go wrong, it was going to affect his dental license.
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23 51. DR. BAST and DR. FEATHERSTONE'S inaction, failures to comply with
24 patient safety standards, their non-response and silence to his myriad of complaints regarding
25 substandard patient care and safety left DR. SONG feeling abandoned; he no longer felt that
26 anyone would be taking care of him at the university. This was the point when DR. SONG
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1 decided he needed to take a break. Threats to patients' safety and care became progressively
2 worse after DEFENDANT BAST took over as Chair. "Things fell apart completely." DR. SONG
3 became fearful with the way the clinic was operating, with constant threats to patient safety. He
4 wanted take a break in an effort relay the sentiment that things urgently needed to change to
5 protect patient care and safety.

6 **RETALIATION**

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8 52. On May 27, 2017, DEFENDANT DR. BAST sent an email response to DR.
9 SONG, stating he was not going to renew DR. SONG'S appointment as faculty going into the
10 2017 academic year. DR. BAST effectively terminated DR. SONG'S faculty position because
11 DR. SONG complained about substandard patient care and conditions of the dental school and
12 risks to patient safety. Underscoring the lack of a business reason for terminating DR. SONG'S
13 ten (10) year volunteer faculty professorship was DEFENDANT DR. BAST'S admission that the
14 dental school had been operating in the negative, "in the red". It makes no sense to terminate a
15 proven long term professor providing free time to the school, plus donating his hard earned
16 money to the school when the school is in the red.

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19 53. DR. SONG was shocked when he received he DR. BAST email terminating his
20 faculty position of ten years. DR. SONG had great student evaluations. He enjoyed teaching. He
21 wanted to help the students and the school, his alma mater. Feeling hurt, embarrassed,
22 humiliated, and trying to make sense of why DR. BAST was not renewing his professorship, he
23 was left with only one conclusion: "I had made these complaints of patient safety. It upset me a
24 lot. I never indicated that I didn't want my faculty appointment." Following DR. BAST'S
25 retaliation by terminating DR. SONG'S faculty appointment, DR. SONG requested to be
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1 transferred to a faculty position in the pediatrics department. As further act of illegal retaliation,
2 DEFENDANT DR. BAST blocked DR. SONG from being transferred to pediatrics.

3 54. DEFENDANTS, and each of them, caused DR. SONG to felt very upset,
4 defeated, emotionally and mentally distressed. He had spent so much of his time giving back to
5 the University, had complained about patient safety strictly to improve the dental school, and
6 then, when he requested a small thing, a transfer to pediatrics, DR. BAST denied that request,
7 ending DR. SONG'S entire academic career at UCSF. DR. SONG expresses his feelings about
8 the personal harm to him, his reputation and career: "And it was so embarrassing that all the
9 people who knew me in the community -- I was president of the dental society, I served in so
10 many areas, the California Dental Association, all the colleagues in practice, they knew that I
11 was teaching. All of the students that came through under me knew that I was a professor at
12 UCSF. And then, all of a sudden, my intent was to transfer over to the orofacial sciences, and he
13 just ended my professorial career at UCSF."

14 55. "Members of my professional community only know I was terminated at UCSF.
15 They don't know the issues of patient care and quality of patient safety and the conditions of the
16 facilities I complained about to DR. BAST, DEAN FEATHERSTONE and to the chancellor.
17 These issues were the reason DR. BAST retaliating against me by terminating my professorship,
18 my faculty appointment, as well as blocking my request for a transfer to a pediatric appointment.
19 And I am too embarrassed to tell my colleagues about this termination. I avoid going to dental
20 events, fearing I will be asked why I was fired as a professor at UCSF after so many years. This
21 is extreme humiliation."

22 56. On May 31, 2017, DR. SONG emailed DEFENDANT DR. BAST, emphatically stating
23 that he did not ask to resign his faculty appointment, contrary to the false narrative advanced by
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1 DEFENDANT DR. BAST, and that he wished a transfer to Pediatric Dentistry. DR. SONG also
2 requested a meeting with DR. BAST to discuss this issue. DEFENDANT DR. BAST refused to
3 meet with DR. SONG.

4 57. On June 15, 2017, Dr. Perkins sent out an email regarding clinic closures after DR.
5 SONG questioned the schedule.

6 58. On June 20, 2017, the residency director of Pediatric Dentistry sent DR. SONG an
7 email stating that DR. SONG would be unable to get a primary faculty appointment unless
8 DEFENDANT DR. BAST renewed his appointment.

9 59. On June 20, 2017, DR. SONG complained to DEFENDANT DEAN
10 FEATHERSTONE about DR. BAST'S retaliation in deliberately denying his teaching
11 appointment. DR. SONG went to dinner on June 20, 2017 with DEFENDANT DEAN
12 FEATHERSTONE and again raised his complaint about DR. BAST'S action of not renewing his
13 appointment. DEFENDANT DEAN FEATHERSTONE responded by asking DR. SONG to
14 leave the university, but offering to "be a mentor" in locating a position elsewhere. These
15 communications are confirmed in emails.

16 60. On June 22, 2017, DR. SONG filed a "Retaliation or Interference Complaint" with the
17 UCSF Department for Whistleblowers, stating: "Because of issues [patients' safety and care,
18 substandard conditions of the dental school], I want to transfer to orofacial sciences or have my
19 time assigned there. Instead, my position was not renewed without explanation, along with
20 reasons not pertinent to the situation. I was told to be quiet. Extensive emails." In his Retaliation
21 Complaint, DR. SONG named DEFENDANT BRIAN BAST as the supervisor who retaliated
22 against him. This form was submitted to the "Whistleblower Coordinator" for UCSF. There was
23 no effective response to his complaint.

61. Also on June 22, 2017, DR. SONG emailed DEFENDANT DEAN FETHERSTONE, expressing his distress and how uncomfortable he was feeling, and inquiring about the status of his requested transfer to pediatrics.

MS. VALARIS' STATEMENT OF FACTS

Ms. Valaris' Background

62. DEFENDANTS hired MS. VALARIS as the manager of the Oral Maxillofacial Clinic on the 17th of January 2017, and DEFENDANTS wrongfully terminated her employment on the 7th of February 2017.

63. MS. VALARIS holds two BA degrees: one in humanities and the second one in liberal arts, in labor relations and anthropology. She was hired with her expert knowledge as a certified coder in medical coding. She is also a licensed instructor through the American Academy of Professional Coders, ("AAPC"), a professional association for people working in specific areas of administration within the healthcare profession. She holds a Professional Medical Coding Curriculum ("PMCC") instructing license through the AAPC in professional medical coding.

64. DEFENDANT BAST terminated MS. VALARIS' employment after three (3) weeks because she discovered and reported to him improper retention of patients' unpaid refunds and overpayment by the California Dental Care program that had not been refunded for periods up to five (5) years .

65. MS. VALARIS first reported the un-refunded patients' money and government's funds to Jake Blackshear, the outgoing Manager of the OMFS, whom MS. VALARIS was replacing. He thanked her and assured her she was doing a great job, indicating that it was good she had discovered these funds and now she could correct this issue.

Ms. Valaris' Duties

66. MS. VALARIS' duties were to be the manager of the at OMFS Clinic located in the dental school known as D1201, and another clinic upstairs at 505 Parnassus where they do specialties. Additionally, she had the duty of managing another clinic at San Francisco General Hospital. When MS. VALARIS was hired on the 17th of January 2017, her assigned duties were to manage several clinic locations; to help put those clinic locations in order because Management was trying to do some renovations; to prepare the final timecards; to work on the computer system "WinOMS"; to work with the billers to make sure that they were coding correctly and were following the CMS guidelines which UCSF follows, verified through their compliance department; to attend regular meetings with the providers and to have weekly meetings with the lead staff person and staff to address any problems that were occurring.

67. Her duties did not include discovering fraud by the university in illegally, intentionally retained, unpaid and un-refunded patients' money and money due to be returned to the State of California for over payment of Dental Care funds. This discovery was unexpected and shocking to her. As a private person and as a tax-payer she felt compelled to report this fraud to Jake Blackshear and to DEFENDANT BAST, with instructions to return the funds because five (5) years was too long a period of time for this to have been a mistake. This was intentional fraud, where the university was representing to the public that these patients and government funds were Account Receivables, falsely inflating the funds available for loans and other purposes for the university.

Whistleblower Re 5-7 Years Patients' And Government' Un-refunded Money

68. When reviewing the accounting computing system, WINOMS, for code compliance, to her shock and astonishment, MS. VALARIS discovered millions of dollars characterized as Account Receivables ("AR") Upon further investigation and reviewing the system, she noticed

these funds were unpaid patients' monies never refunded to patients and overpayments from California Dental Care Program that had not been refunded to the state.

69. She had a long conversation with Jake Blackshear about these mischaracterizations of funds, inquiring why the funds were not returned to patients and to the state. Jake Blackshear's response was "That's one of the reasons we're glad you're here, because you'll be able to get this cleaned up."

70. Jake admitted in deposition testimony the UCSF Dental School has retained un-refunded patients' and government dental excess payments:

23Q. Okay. Well, tell us about that, because you're a

24 financial person with your master's degree in finance.

25 What are these credit balances, fraud instances that she

Page 41

1 reported to you?

2 What does that involve?

3 A. So without validating whether or not it's

4 technically fraud, because I don't actually know the legal

5 policy well enough to speculate on whether or not that's

6 actually fraud.

7 Q. Yeah.

8 A. The situation is that when a patient comes in and

9 pays for a procedure, and then there is also a payment from

10 an insurance company, sometimes there's a double payment

11 and a patient will have a credit balance on their account.

12 Sometimes that credit balance is applied towards future

13 treatment; sometimes it just sits there.

14 And our department policy was always to send those

15 back to patients when they would call and ask for them.

16 And we from time to time would create a list of patient

17 accounts that needed to be cleared.

18 And so from time to time, that list would get

19 fairly long of patients that had credit balances that

20 needed to be refunded.

21 Q. M-hm. And when you say would get long, would also

22 get long in time that they would age?

23 A. Potentially, yes.

1 71. MS. VALARIS told Jake Blackshear these funds were a problem, indicating that the
2 university is showing AR of over a million dollars in the dental school where everything is
3 almost all cash money coming in from the patients and from the government, State of California.
4 Jake Blackshear admitted these funds were patients' un-refunded money and funds that rightly
5 belonged to the government.
6

7 72. MS. VALARIS further pointed out to manager Jake Blackshear that patients were
8 frequently asking for money due back to them, and the university was not refunding their money.

9 73. MS. VALARIS reported these patients and government un-refunded monies to
10 DEFENDANT DR. BAST. He did not want to give money back and did not want to make the
11 refunds, each time stating, "Those will have to wait." MS VALARIS pressed him about the
12 urgency of making the refunds, emphasizing that the refunds can't wait because if the university
13 knows that there is a problem of un-refunded, monies there is a certain period of time by which
14 the university has to make refunds to the people, and especially the government. She pointed out
15 that is a time limitation from the time of discovery and identification of the problem to the time
16 of compliance to return the money, informing DR. BAST that these un-refunded monies had
17 aged for up to 5 to 7 years.
18
19

20 74. MS. VALARIS calmly, but engagingly told DR. BAST that failure to refund the
21 patients' and government's money was something that the university could not do. It was
22 considered fraud.
23

24 **Whistleblowing/ Report To Dr. Bast**

25 75. MS. VALARIS was concerned that her license was on the line as the manager of the
26 D1201. If you don't report it and you know about this fraud, it is a big problem. She felt it was
27
28

1 her duty to report this fraud and insist on action to correct the problem. She told DEFENDANT
2 BAST that she was trying to protect the university.

3 **Report Time Card Fraud**

4 76. On or about January 17th, 2017, supervisor Anna Li in the D1201 Department reported
5 to MS. VALARIS that some employees were engaging in timecard fraud. She reported that some
6 employees were clocking in and out on another supervisor's computer after the employee had
7 already left the clinic. The employee would leave hours before 5 p.m. check out time, and other
8 employees and supervisors would clock-out those "AWOL" employees.
9

10 77. MS. VALARIS reported this time-card fraud to Jake Blackshear. He instructed MS.
11 VALARIS to contact labor relations. MS. VALARIS also inform DR. BAST about this timecard
12 fraud by sending him an email around January 31, 2017.

13 **RETALIATION: WRONGFUL TERMINATION**

14
15 78. At the end of the day, approximately 3:30, 4 o'clock, on February 7, 2017,
16 DEFENDANT BAST sent Jake Blackshear to a meeting MS. VALARIS was holding with staff,
17 to summon MS. VALARIS to report to his office for a meeting. Neither Jake Blackshear nor
18 DEFENDANT BAST gave MS. VALARIS any notice as to what the meeting was going to be
19 about.
20

21 79. In the meeting in DR. BAST'S office, Jake Blackshear informed MS. VALARIS that
22 her employment was terminated. DR. BAST refused to engage in any discussion about why he
23 was firing MS. VALARIS, ignoring her repeated requests for a reason for the termination of her
24 employment. DR. BAST refused to even talk to MS. VALARIS or answer her questions as to the
25 termination. DEFENDANT DR. BAST also refused to provide anything in writing as to why he
26 was terminating her employment. DEFENDANT BAST'S only response was "It would be a
27 liability to the university if we told you."
28

Temporal Proximity In Time Of Reporting Patients Re-Fund Fraud

80. On or about the week January 31, 2017, during a meeting in which MS. VALARIS again raised the payment of patients' and government's un-refunded monies, DEFENDANT BAST stated: "This is something we'll talk about later." And the next morning he said to MS. VALARIS: "It's not something we're going to handle right now." The date DEFENDANT DR. BAST terminated her employment was February 7, 2017, approximately one week after she had several discussions with him about returning the monies due to patients and to the government. The fact that DEFENDANT DR. BAST terminated the employment of MS. VALARIS within one week of her report of fraud against patients and government is positive proof of illegal retaliation, especially since Jake Blackshear had assured MS. VALARIS she was doing a good job.

DISCRIMINATION

81. DEFENDANTS, and each of them, treated DR. SONG and MS. VALARIS differently and discriminatorily because they engaged in protected activity, including complaining about substandard patient care, patient safety, the conditions of the dental school, and un-refunded patients' and government's monies. DEFENDANTS have treated the other faculty members who did not complain about patients' safety, care and treatment more favorably than DR. SONG.

82. Likewise, DEFENDANTS treated other employees who did not complain about fraud by the university in intentionally retaining patients' and governments' monies and refusing to refund those funds without justification more favorably than MS. VALARIS.

FEDERAL CLAIMS

FIRST CAUSE OF ACTION
DEPRIVATION OF FIRST AMENDMENT

RIGHT OF FREE PUBLIC CONCERN SPEECH
 IN VIOLATION OF 42 U.S.C. 1983
**(Against DEFENDANT BRIAN BAST, *In His Individual Capacity*
 and DEFENDANT FEATHERSTONE, *In His Individual Capacity*)**

83. PLAINTIFFS incorporate by reference herein the preceding paragraphs of the complaint as though set forth here in full.

84. DEFENDANTS, and each of them, retaliated against PLAINTIFFS because they exercised their First Amendment Right of Free Speech regarding public concerns. Specifically, DR. SONG complained to DEFENDANTS, their managers, agents and those in authority that the university was engaging in conduct which threatened patient care, treatment and safety. DR. SONG spoke as a private citizen and a concerned dental professional. DR. SONG's duties did not include reporting substandard patient care to management. As a direct result of DR. SONG's complaints of unsafe patient care, DEFENDANTS, and each of them, engaged in adverse employment actions, causing DR. SONG to suffer certain harms, injuries, and to be forced to endure unpleasant employment conditions and deprivation of employment benefits. DEFENDANTS retaliated against DR. SONG for engaging in speech protected by the First Amendment. That speech, he alleges, consists of protesting that the DEFENDANTS' blanket policy of failing to take corrective action to protect vulnerable, unwarned patients against negligent patient care.

85. Similarly, MS. VALARIS spoke as a private citizen and as a concerned dental professional. MS. VALARIS' duties do not include reporting to management fraud by the university regarding un-refunded patients' and government' due and owing monies. As a direct result of MS. VALARIS' complaints of unsafe patient care, DEFENDANTS, and each of them, engaged in adverse employment actions, causing MS. VALARIS to suffer certain harms, injuries, and to be forced to endure unpleasant employment conditions and deprivation of

1 employment benefits. DEFENDANTS retaliated against MS. VALARIS for engaging in speech
2 protected by the First Amendment. That speech, she alleges, consists of protesting that the
3 DEFENDANTS' blanket policy of failing to take corrective action to protect vulnerable,
4 unwarned patients of negligent and intentional fraud by refusing to repay patients' and
5 government's funds.
6

7 86. "A public employer may not [take adverse action such as] discharge an employee on a
8 basis that infringes that employee's constitutionally protected interest in freedom of speech."
9 *LeFande v. D.C.*, 613 F.3d 1155, 1158 (D.C. Cir. 2010) To determine whether such a violation
10 has come to pass, the Ninth Circuit follows the D.C. Circuit's four-part inquiry: "First, the
11 public employee must have spoken as a citizen on a matter of public concern. Second, the court
12 must consider whether the governmental interest in promoting the efficiency of the public
13 services it performs through its employees outweighs the employee's interest, as a citizen, in
14 commenting upon matters of public concern. Third, the employee must show that his speech was
15 a substantial or motivating factor in prompting the retaliatory or punitive act. Finally, the
16 employee must refute the government employer's showing, if made, that it would have reached
17 the same decision in the absence of the protected speech."
18
19

20 87. *Bowie v. Maddox*, 642 F.3d 1122, 1133 (D.C. Cir. 2011) (quoting *Wilburn v Robinson*,
21 480 F.3d 1140, 1149 (D.C. Cir. 2007)). "The first two inquiries are questions of law, while the
22 last two are questions of fact usually left to the jury." *Thompson*, 428 F.3d at 286. At the
23 pleading stage, however, the Complaint must still "allege[] sufficient facts for a jury to
24 conclude" that each factor has been satisfied, see *id.*, giving PLAINTIFFS the benefit of all
25 reasonable inferences. See *Sparrow*, 216 F.3d at 1113.
26
27
28

1 88. The first prong of the test “really imposes two requirements – that the employee speak
2 ‘as a citizen’ and that the speech be ‘on a matter of public concern.’” *Hawkins v. D.C.*, 923 F.
3 Supp. 2d 128, 137 (D.D.C. 2013). The “matter of public concern” requirement should be
4 addressed first because “[i]f the speech is not on a matter of public concern, ‘the employee has
5 no First Amendment cause of action based on his or her employer’s reaction.’” *LeFande*, 613
6 F.3d at 1159) (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006)).

8 89. Clearly, DR. SONG’s speech regarding patient care, treatment and safety, and MS.
9 VALARIS’ complaints about unpaid refunded patients’ and governments’ payments all are
10 matters of public concern. The California Labor Code reflects the public policy and public
11 concern that the community is harmed when an employer fails to pay earned wages when due.
12 Likewise, FEHA expressly declares that it is the public policy of California that employees work
13 in a discrimination-free environment. Additionally, California Health and Safety Code Section
14 1278.5 encourages medical providers, such as DR. SONG and MS. VALARIS, to speak up to
15 protect patients when they witness negligent and fraudulent conduct that harms or threatens to
16 harm patients. DR. SONG’s and MS. VALARIS’ speech were a matter of public concern, not a
17 matter of mere “workplace grievance[s]”.The Ninth Circuit has endorsed the D.C. Circuit
18 position refuting “the proposition that a personnel matter per se cannot be a matter of public
19 concern.” *LeFande*, 613 F.3d at 1161. Rather, speech “relates to a matter of public concern if it is
20 ‘of political, social, or other concern to the community.’” *Id.* at 1159 (quoting *Connick v. Myers*,
21 461 U.S. 138, 146 (1983)). As an example, were the head of a city department “to assert the
22 power to fire, without process, all [its subordinate] officers, paid and unpaid, that action would
23 ‘be fairly considered as relating to [a] matter of political, social, or other concern to the
24 community’ . . . although it relates to a ‘personnel matter.’” *Id.* at 1161.

1 90. DR. SONG is a concerned faculty member, teacher, and compassionate medical
2 provider who has taken an oath to “First Do No Harm”. DR. SONG’s speech complaining about
3 improper patient care and negligent practices that threatened harm to patients was speech on
4 matters of public concern. Likewise, MS. VALARIS is a licensed medial code professional, with
5 a duty to protect the accuracy of financial billing by medical providers, engaged in speech as a
6 matter of public concern to report five, six, seven years of un-refunded patients and
7 government’s funds that should have been refunded.
8

9 91. The next question in the analysis is whether DR. SONG and MS. VALARIS spoke “as
10 a citizen” or, instead, “pursuant to his official duties.” Garcetti, 547 U.S. at 421. “[W]hen public
11 employees make statements pursuant to their official duties, the employees are not speaking as
12 citizens for First Amendment purposes, and the Constitution does not insulate their
13 communications from employer discipline.” Id. (district attorney did not speak as private citizen
14 when he wrote and filed memorandum that was “part of what he, as a calendar deputy, was
15 employed to do”). The DEFENDANTS, and each of them, cannot argue, with any credibility,
16 that DR. SONG’s duties as a dentist did in any way include speaking and complaining about
17 negligent patient care, treatment and safety or discrimination in the work place. MS. VALARIS’
18 duties did not include searching for fraud in payments by patients and governments that were not
19 refunded for years. Indeed, the very fact that DEFENDANTS have retaliated against DR. SONG
20 and MS. VALARIS with adverse employment actions of terminating their employment is
21 evidence that DEFENDANTS do not contend that DR. SONG’s or MS. VALARIS’ duties
22 include speaking publicly with complaints about substandard patient care and treatment, and
23 unpaid patients and government’s monies. DR. SONG’s and MS. VALARIS’ speech was that of
24 concerned private citizens, and inures to the benefit of, and was on behalf of, a class of members
25
26
27
28

1 in society, namely patients of dental and surgery care and treatment and tax-payers whose money
2 pays for dental care of indigent patients, as well as accountability for safety for dental patients
3 and financial honesty in the dental profession.

4 92. The second prong of the four-part inquiry requires the Court to consider whether
5 UCSF's "interest in promoting the efficiency of the public services it performs through its
6 employees outweighs DR. SONG's and MS. VALARIS' interest, as citizens, in commenting
7 upon matters of public concern." Bowie, 642 F.3d at 1133. UCSF might argue it has an "interest"
8 in promoting a harmonious work environment among faculty members and employees and can
9 require DR. SONG and MS. VALARIS not to complain about substandard patient care and
10 treatment or un-refunded patients' and government payments for dental services.
11

12 93. Even if Defendant UCSF asserts this position, their interest in maintaining a
13 harmonious work environment cannot and does not outweigh DR. SONG's and MS. VALARIS'
14 interest, as citizens, in commenting upon matters of public concern such as patient care, safety
15 and treatment, and financial fraud by the university. Defendant UCSF's interest, whatever it may
16 be, has no bearing on DR. SONG's and MS. VALARIS' First Amendment Right and interest as
17 citizens "in commenting upon matters of public concern." Pickering v. Bd. of Educ., 391 U.S.
18 563, 568 (1968) (emphasis added). UCSF interest as just as it was in Pickering, supra: "Here, the
19 employer's side of the Pickering scale is entirely empty," Lane v. Franks, 134 S. Ct. 2369, 2381
20 (2014). DEFENDANTS' actions in retaliating against DR. SONG because of his speech
21 complaints of patients safety, care, and substandard conditions of the dental school "was a
22 substantial or motivating factor in prompting the retaliatory or punitive act[s]." Bowie, 642 F.3d
23 at 1133.
24
25
26
27
28

94. Finally, DEFENDANTS will be unable to credibly argue that they would have reached the same decision of terminating the employment of DR. SONG and MS. VALARIS, absence of his protected speech protesting these violations. Thus, DR. SONG and MS. VALARIS assert a sustainable cause of action for retaliation for exercising their First Amendment Right to speak about matters of public concern.

95. DEFENDANTS' retaliation against DR. SONG for speaking up and protesting the violations of his constitutional rights is a violation of his right of free speech in the public interest. DEFENDANTS' illegal conduct entitles DR. SONG to all damages incurred as herein alleged.

Wherefore, PLAINTIFFS pray for judgment as more fully set forth below.

SECOND CAUSE OF ACTION
RETALIATION IN VIOLATION OF CIVIL RIGHTS
(42 U.S.C. § 1983)

**(Against DR. FEATHERSTONE, *In His Individual Capacity*,
DR. BRIAN BAST, *In His Individual Capacity*)**

96. PLAINTIFFS incorporate by reference herein the preceding paragraphs of the complaint as though set forth here in full.

97. Federal Civil Rights Law 42. U.S.C. §1983 provides in pertinent part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

98. DEFENDANTS' actions and failures, as alleged, constitute a pattern, practice, and custom of violations of the Civil Rights Laws of the United States, 42 U.S.C § 1983.

1 DEFENDANTS, while acting under color of state authority and law, wrongfully and
 2 intentionally retaliated against DR. SONG and MS. VALARIS by terminating their employment
 3 because they exercised their First Amendment right under the United States Constitution of Free
 4 Speech by making a complaint to their employer. In the case of DR. SONG to the university's
 5 whistleblower complaint department and to supervisor, DEFENDANT DR. BAST, concerning
 6 patient care and safety at UCSF, and in the case of MS. VALARIS, concerning fraud in
 7 refunding patients' and government's dental payments.
 8

9 99. DEFENDANTS' conduct, as set forth above, constitutes violations, under color of law,
 10 of PLAINTIFFS' rights, privileges, and immunities guaranteed to them by the First Amendment
 11 of the United States Constitution of free speech and to petition the government for redress of
 12 grievances. Further, DEFENDANTS' conduct violated DR. SONG'S and MS. VALARIS'
 13 Fourteenth Amendment right of Liberty by retaliating against them and thereby by restricting
 14 and curtailing their right to be free of unconstitutional retaliatory conduct.
 15

16 **Defendants Engaged In A Pattern And Practice, Policy And Custom Of Retaliation**
 17

18 100. DR. BAST has a proclivity, propensity and predictable practice and custom of striking
 19 out against any employee who complains about the patient care, substandard conditions of the
 20 facilities, illegal management practices, time card fraud, and other egregious illegal conduct in
 21 his administration as Department Chair and managing agent of Defendant UCSF Department of
 22 Oral & Maxillofacial Surgery. Evidence adduced is overwhelming of this violation of 42 U.S.C.
 23 Section 1983 not only against DR. SONG and MS. VALARIS, but also against many other
 24 medical providers, employees and managers.
 25

26 **Other Suffering Victims in Wake of Dr. Bast's Illegal Retaliation**
 27
 28

1. DR. HIEU PHAM

101. DR. PHAM met with DEFENDANT DR. BAST in his office on Wednesday, January 27, 2016, in order to inform him that the department has been underpaying him even though he brings in the highest clinical income in the department. DR. PHAM asked DEFENDANT DR. BAST to honor the contract DR. PHAM has had with the department since July 1, 2004. The agreement DR. PHAM had with the department is to provide 2 days of patient care. In return, the department will pay him 50% of the highest senior dentist salary scale with full benefits. DR. PHAM's salary, benefits and expenses are paid by the clinical income DR. PHAM generates from patient care.

102. On May 18, 2016, Dr. Derek Park, Dr. Chirag Patel and DR. PHAM met with DEFENDANT DR. BAST and raised serious concerns about substandard patient care being rendered by a white female surgeon, Dr. P. They expressed to DEFENDANT DR. BAST that Oral Surgeons are being scrutinized for their ability to safely provide anesthesia and operate simultaneously after two anesthetic related deaths occurred in the last two (2) years in the San Francisco Bay Area. They expressed to DEFENDANT DR. BAST that oral surgeons must police themselves and protect the public from incompetent surgeons.

103. DEFENDANT DR. BAST expressed antagonism toward the Doctors who complained about Dr. P., and he exhibited extreme hostility against DR. PHAM for bring these patient safety issues to his attention. Despite all these serious incidents, DEFENDANT DR. BAST insisted that she was a good surgeon, falsely accusing DR. PHAM of orchestrating all these negative complaints against her.

104. Even though DR. PHAM was working two days of direct patient care a week and a half-day of administration duties (fulfilling a 50% work appointment), as well as providing additional off-hour contact information for his patients, on April 4, 2017, DR. PHAM received a

1 letter from Cecelia Lucero, Human Resource Generalist of UCSF Human Resources Department
2 stating the following changes to DR. PHAM's appointment:

3 'This letter is to notify you that as previously informed, your Senior Dentist (Title Code
4 0774) position is being reduced from 50% to 40% effective March 27, 2017.
5 ...eligible employees whose appointment is reduced below 50% no longer accrue vacation
6 or sick leave. Therefore, you will stop accruing vacation and sick leave hours as of March
7 27, 2017.'

8 2. DEPOSITION OF ANNAMARIE ABRANTES-LI FEBRUARY 11, 2019

9 105. Defendant DR. BAST Would Not Allow 17 Year Tenured Manager To Return To
10 The Clinic Following Stress Leave After She Reported Time Card Fraud And Forced Her Into
11 Early Retirement.

12 12 Q. Did you work at UCSF for a while?

13 13 A. Yes, I did.

14 14 Q. For how long?

15 15 A. I worked at UCSF for about 17 years.

16 22 Q. We just had a deposition with a Ms. Tina

17 23 Valarez (phonetic).

18 24 Do you know Tina?

19 25 A. Yes.

20 Page 5

21 1 Q. And she told us that you had brought some

22 2 issue of time card fraud to her by some of the

23 3 coworkers?

24 4 A. Yes.

25 5 Q. And you did do that?

26 6 A. Yes.

27 9 Q. Were you subjected to any kind of complaints

28 10 against you following your reporting this time card

11 fraud?

12 13 THE WITNESS: Yes.

13 18 Q. -- do you believe that these complaints

14 19 against you were a part of retaliation because you

15 20 brought up the time card fraud?

16 21 A. Yes.

17 Page 11

18 3 Q. Okay. And so did you believe -- first of all,

19 4 did Dr. Bast ever have any discussion with you about

5 your report to him of this time card fraud?

6 A. No. He did not discuss anything with me.

7 Q. Did he say he was going to go and correct the
8 problem to the --

9 A. No.

The staff should not

12 see you, so don't go inside the clinic until Dr. Bast

13 talks to you.

14 I said, What did I do wrong? I didn't do

15 anything wrong. Why would I not step inside the clinic?

16 So I went home. I was, like, pondering over it. What

17 should I do? Things like that. Should I really just

18 retire?

So they said, Wait for

12 Dr. Bast. He's in San Francisco General.

13 I drove around the avenue, waiting for

14 Dr. Bast -- to hear from Dr. Bast to say, I'm ready to

15 talk to you.

16 Q. Because you couldn't go into the clinic?

17 A. Yes. But I never got -- I never heard from

18 Dr. Bast, so they sent me home again.

19 Q. "They," you mean?

20 A. Bradley Spur and Joe Sorrano.

21 Q. And Joe Sorrano had replaced Tina?

22 A. Interim, yes.

23 Q. And how long did you drive around on the

24 avenue waiting for Dr. Bast?

25 A. I couldn't remember now. It may have been an

Page 26

1 hour or two, driving around the avenue.

2 Q. And while you were driving around, how did you
3 feel?

4 A. Terrible.

5 Q. Did Dr. Bast ever meet with you?

6 A. Not on that day.

7 Q. Did he meet with you at any time?

8 A. No.

8 Q. And "they," being Joe Sorrano and Bradley

9 Spur.

10 Did Dr. Bast ever tell you not no go back in?

11 A. They were telling me that this was an

12 instruction from Dr. Bast.

5 Q. Going back to Exhibit 1, could you read the

6 last sentence?

7 A. "The emotional distress and mental torture,
8 how I can describe it. It was -- this was so traumatic
9 for me that I had to go into therapy to finally decide
10 on an early retirement. Emotional distress and mental
11 torture, how I can describe it?"

12 Q. That's what it felt like, mental torture?

13 A. Yes.

6 3. DEPOSITION OF MARK A. CRANE, DDS, MD JANUARY 30, 2019

7 106. Defendant Dr. Bast "fabricated a story" against Dr. Crane involving a patient when Dr.
8 Crane was out on Paternity leave as a means to deny his merit application for a position, and
9 instead appointing Dr. P in violation of the merit rules.

11 3 Q. So you've been a volunteer faculty member from 2000
12 4 or 2001?

13 5 A. 2001. So my appointment at UC ended in 2000, and
14 6 then I came back in 2001 as a volunteer faculty.

Page 5

14 11 Q. Now, is it your general understanding that UCSF has
15 12 a merit system base, where the position has to be
16 13 advertised and there has to be some kind of competitive
17 14 process, including an interview and evaluation, before a
18 15 position is filled?

18 18 THE WITNESS: The University has pretty specific
19 19 rules. And a general position that doesn't fill a
20 20 specific, unique need with somebody who is specifically
21 21 qualified for that position has to go through a general
22 22 search, a minimum of, I believe it's one month --
23 Q. So is it your understanding that Dr. Bast appointed
24 7 Dr. Perkins without this competitive vetting process?
25 10 THE WITNESS: I know that Dr. Bast is the acting
26 11 chair and had appointed her. As I said, I'm not aware if
27 12 there was an impaneled search committee and the standard
28 13 was followed.

11 Q. Okay. And what did Dr. Bast say in that document?

Page 22

4 After

5 "...careful consideration you have not been selected to
6 fill this position. Your qualifications are
7 excellent and I encourage you to apply for future
8 academic positions within the Department of Oral

9 and Maxillofacial Surgery.

10 Sincerely yours, Brian Bast."

11 Q. Okay. Did you write any response to him at all to
12 that

3 Q. Okay. And what did Dr. Bast say in that document?

4 Page 22

4 After

5 "...careful consideration you have not been selected to

6 fill this position. Your qualifications are

7 excellent and I encourage you to apply for future

8 academic positions within the Department of Oral

9 and Maxillofacial Surgery.

10 Sincerely yours, Brian Bast."

11 Q. Okay. Did you write any response to him at all to

12 that particular October 2nd, '17 --

13 A. I just read this on Friday..

10 THE WITNESS: But there is a thread of a number of

11 communications with Cheryl Addleman, who is the

12 investigation specialist for the Office of Ethics and

13 Compliance, and she was involved in the investigation -
-articular October 2nd, '17 --

14 A. I just read this on Friday.

10 THE WITNESS: But there is a thread of a number of

11 communications with Cheryl Addleman, who is the

12 investigation specialist for the Office of Ethics and

13 Compliance, and she was involved in the investigation -

Q. And what did she say in the communication to you?

19 A. After she had interviewed Dr. Bast, she sends --

20 this is March 9th, 2018.

21 Q. Okay.

22 A. Months ago.

23 "Dr. Crane, one final question. Do you recall

24 a time when you were a UCSF Senior Resident and

25 Dr. Bast had just started his residency? It

Page 29

1 was at SFGH, fourth of July weekend; Dr. Bast

2 was on duty, you were on-call and it had to do

3 with a patient that came in that had been shot

4 in the face. Whatever information you can

5 recall or provide would be helpful."

9 THE WITNESS: I responded on the 10th, "No," but I

10 was out of town. So I responded no and then when I got

11 back to town later that day, I said:

12 "Hi Ms. Addleman. Back in town and checked my case

13 notes. I find no operation report of a facial

14 gunshot patient in July 1997. Further, I have no
 15 recollection of such a case; yet, since gun
 16 injuries were uncommon in San Francisco then, I
 17 think I would remember it.
 19 "Can you give me more details? Then, perhaps, I
 20 can corroborate the issue or refute it as yet
 21 another tiresome fabrication."

107.DEFENDANTS' actions have caused and continue to cause PLAINTIFFS substantial
 losses in earnings, significant loss of reputation and professional injury, loss of promotional
 opportunities and other benefits, lost wages, attorneys' fees, medical expenses, loss of future
 earnings and benefits, cost of suit, humiliation, embarrassment and anguish, all to their damage
 in an amount according to proof.

108.As to DEFENDANTS DR. BAST and DR. FEATHERSTONE, the acts of these
 DEFENDANTS, as alleged herein, were intentional, outrageous, despicable, oppressive,
 fraudulent, and done with ill will and intent to injure DR. SONG and MS. VALARIS and to
 cause each PLAINTIFF mental anguish, anxiety, and distress. DEFENDANTS' acts were done
 in conscious disregard of the risk of severe emotional harm to PLAINTIFFS and with the intent
 to injure, constituting oppression, fraud, and malice under California Civil Code §3294, entitling
 PLAINTIFFS to punitive damages against DEFENDANT DR. BAST and DEFENDANT DR.
 FEATHERSTONE only.

Wherefore, PLAINTIFFS pray for judgment as more fully set forth below.

THIRD CAUSE OF ACTION
DEPRIVATION OF PROPERTY AND DUE PROCESS
IN VIOLATION OF FOURTEENTH AMENDMENT
 42 U.S.C. § 1983
(Against DR. FEATHERSTONE and DR. BRIAN BAST
In Their Individual Capacity)

109.PLAINTIFFS incorporate by reference herein the preceding paragraphs of the
 complaint as though set forth here in full.

1 110.DEFENDANTS DR. FEATHERSTONE and DR. BAST are the final authority and
2 final decision makers for DEFENDANT UCSF. DEFENDANT DR. BAST and DEFENDANT
3 DR. FEATHERSTONE, while acting under color of state authority and law, wrongfully and
4 intentionally deprived DR. SONG of his Professor Appointment and faculty position, his
5 property, in violation of DR. SONG's Fourteenth Amendment Rights under the United States
6 Constitution.

8 111.DEFENDANTS DR. FEATHERSTONE and DR. BAST are the final authority and
9 final decision makers for DEFENDANT UCSF. DEFENDANT DR. BAST and DEFENDANT
10 DR. FEATHERSTONE, while acting under color of state authority and law, wrongfully and
11 intentionally deprived MS. VALARIS of her job as manager of the OMFS clinic, the income
12 derived therefrom constituting her property, in violation of MS. VALARIS' Fourteenth
13 Amendment Rights under the United States Constitution.

15 112.DEFENDANTS' conduct, as set forth above, constitutes violations, under color of law,
16 of PLAINTIFFS' rights, privileges, and immunities guaranteed to them by the Fourteenth
17 Amendment of the United States Constitution. Further, DEFENDANTS' conduct violated DR.
18 SONG's Fourteenth Amendment right of Due Process by depriving DR. SONG of his property,
19 his Professor Appointment and faculty position with UCSF without due process of law. Further,
20 DEFENDANTS' conduct violated MS. VALARIS' Fourteenth Amendment right of Due Process
21 by depriving her of her property, her position as a manager and her wages derived therefrom
22 without due process of law.

25 113.DEFENDANTS' actions have caused and continue to cause PLAINTIFFS substantial
26 losses in earnings, significant loss of reputation and professional injury, loss of promotional
27 opportunities and other employment benefits, lost wages, attorneys' fees, medical expenses, loss
28

1 of future earnings and benefits, cost of suit, humiliation, embarrassment and anguish, all to their
 2 damage in an amount according to proof.

3 114. As to DEFENDANT DR. FEATHERSTONE and DEFENDANT DR. BAST only, the
 4 acts of these DEFENDANTS, as alleged herein, were intentional, outrageous, despicable,
 5 oppressive, fraudulent, and done with ill will and intent to injure DR. SONG and to cause him
 6 mental anguish, anxiety, and distress. DEFENDANTS' acts were done in conscious disregard of
 7 the risk of severe emotional harm to PLAINTIFFS and with the intent to injure, constituting
 8 oppression, fraud, and malice under California Civil Code §3294, entitling PLAINTIFFS to
 9 punitive damages against DEFENDANT DR. FEATHERSTONE and DEFENDANT DR.
 10 BAST.
 11

12
 13 Wherefore, PLAINTIFFS pray for judgment as more fully set forth below.

14
 15 **STATE CLAIMS**

16
 17 **FOURTH CAUSE OF ACTION**

18 **VIOLATION CALIFORNIA LABOR CODE SECTION 1102.5**

19 **(Against Defendant Employer UCSF)**

20 115. PLAINTIFFS incorporate by reference herein the preceding paragraphs of the
 21 complaint as though set forth here in full.

22 116. DEFENDANT UCSF took adverse employment action against DR. SONG and MS.
 23 VALARIS in violation of California Labor Code Section 1102.5 by retaliating against DR.
 24 SONG for engaging in statutorily protected activity. PLAINTIFFS' protected activity included,
 25 but is not limited to, the following: complaining to DR. BAST, DR. FEATHERSTONE and Jake
 26 Blackshear about substandard patients' care, conditions of the dental school and patients' safety
 27 and fraud by the university in refusing to refund over payment of patients' and governments'
 28 excess payments for dental care and as a direct and legal result of DEFENDANTS' illegal and

1 retaliatory conduct, as set forth herein, PLAINTIFFS have suffered and continue to suffer
 2 substantial economic and non-economic damage, in an amount according to proof.

3 Wherefore, PLAINTIFFS pray for judgment as more fully set forth below.
 4

5 **FIFTH CAUSE OF ACTION**
 6 **RETALIATION IN VIOLATION OF**
 7 **HEALTH & SAFETY CODE SECTION 1278.5**
 8 **(Against Defendant UCSF)**

9 117. PLAINTIFFS incorporate by reference herein the preceding paragraphs of the
 10 complaint as though set forth here in full.

11 118. California Health & Safety Code Section 1278.5 states: "No health facility shall
 12 discriminate or retaliate, in any manner, against any patient, employee, member of the medical
 13 staff, or any other health care worker of the health facility because that person has done either of
 14 the following: (A) Presented a grievance, complaint, or report to the facility, to an entity or
 15 agency responsible for accrediting or evaluating the facility, or the medical staff of the facility,
 16 or to any other governmental entity. (B) Has initiated, participated, or cooperated in an
 17 investigation or administrative proceeding related to, the quality of care, services, or conditions
 18 at the facility that is carried out by an entity or agency responsible for accrediting or evaluating
 19 the facility or its medical staff, or governmental entity. (2) No entity that owns or operates a
 20 health facility, or which owns or operates any other health facility, shall discriminate or retaliate
 21 against any person because that person has taken any actions pursuant to this subdivision."
 22

23 119. From 2015 through his wrongful employment termination, DR. SONG and other
 24 doctors provided DEFENDANT DR. BAST with a detailed description of substandard patient
 25 care and treatment. In his complaint, DR. SONG provided facts concerning substandard patient
 26 care and safety to the administration and supervisors.
 27
 28

1 120.MS. VALARIS also provided DEFENDANT BAST with solid evidence of over
2 payments of dental care money, which under law should have been refunded to patients or to the
3 government for dental care payments.

4 121.DEFENDANTS retaliated against DR. SONG and MS. VALARIS by terminating their
5 employment.

6 122.DEFENDANT UCSF, through its managing agents at UCSF, retaliated against DR.
7 SONG and MS. VALARIS for engaging in a protected activity. This adverse employment action
8 was a direct result of DR. SONG'S and MS. VALARIS' protected activity and is therefore
9 retaliation.
10

11 123.DEFENDANTS' actions of retaliation against DR. SONG and MS. VALARIS in the
12 terms, conditions and benefits of their employment have caused and continue to cause them
13 substantial losses in earnings, significant loss of reputation and professional injury, loss of
14 promotional opportunities and other employment benefits, lost wages, attorneys' fees, medical
15 expenses, loss of future earnings and benefits, cost of suit, humiliation, embarrassment and
16 anguish, all to their damage in an amount according to proof.
17
18

19 Wherefore, PLAINTIFFS pray for judgment as more fully set forth below.

20 **SIXTH CAUSE OF ACTION**

21 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

22 **(Against DR. BAST and Dr. FEATHERSTONE)**

23 124.PLAINTIFFS incorporate by reference herein the preceding paragraphs of the
24 complaint as though set forth here in full.

25 125.DEFENDANT DR. BAST AND DR. FEATHERSTONE engaged in extreme and
26 outrageous conduct by retaliating against DR. SONG and MS. VALARIS for their participation
27 in a statutorily protected activity, including complaining about patient care and safety and fraud
28 by UCSF intentionally retaining, converting, and embezzling patients and governments' un-

1 refunded monies for dental care. DEFENDANTS' illegal retaliation infringed on PLAINTIFFS'
 2 exercise of their United States Constitution First and Fourteenth Amendments rights of Free
 3 Speech and Liberty. DEFENDANTS' conduct violates public policy as such and should not be
 4 tolerated in a civilized society.

5 126.DEFENDANTS' conduct was intentional and caused DR. SONG and MS. VALARIS
 6 to suffer severe emotional distress. As to DEFENDANT DR. BAST AND DR.
 7 FEATHERSTONE only, the acts of these DEFENDANTS, as alleged herein, were intentional,
 8 outrageous, despicable, oppressive, fraudulent, and done with ill will and intent to injure DR.
 9 SONG and to cause him mental anguish, anxiety, and distress. DEFENDANTS' acts were done
 10 in conscious disregard of the risk of severe emotional harm to DR. SONG and MS. VALARIS
 11 and were a substantial factor in causing harm, damage, and injuries and committed with the
 12 intent to injure, constitution oppression, fraud, and malice under California Civil Code §3294,
 13 entitling PLAINTIFFS to punitive damages against these DEFENDANTS only.
 14
 15

16 Wherefore, PLAINTIFFS pray for judgment as more fully set forth below.
 17

18 **SEVENTH CAUSE OF ACTION**

19 NEGLIGENCE GOVERNMENT CODE SECTION 815.2

20 **(Against Defendant Employer)**

21 127.PLAINTIFFS incorporate by reference herein the preceding paragraphs of the
 22 complaint as though set forth here in full.

23 128. California Government Code Section 815.2. (a) provides: "A public entity is liable for
 24 injury proximately caused by an act or omission of an employee of the public entity within the
 25 scope of his employment if the act or omission would, apart from this section, have given rise to
 26 a cause of action against that employee or his personal representative."

27 129.DEFENDANT DR. BAST and DR. FEATHERSTONE owed a duty of care to DR.
 28 SONG and to MS. VALARIS to conduct themselves so as to avoid risk of injury to them.

1 DEFENDANTS BAST and FEATERSTONE breached their duty to DR. SONG and MS.
2 VALARIS by terminating PLAINTIFFS' employment. DEFENDANT DR. BAST and
3 DEFENDANT FEATHERSTONE breached this duty, and were negligent.

4 130. As a direct and legal result of DEFENDANTS ' negligence as set forth herein,
5 PLAINTIFFS have suffered and continues to suffer substantial economic and non-economic
6 damage in an amount according to proof.
7

8 Wherefore, PLAINTIFFS pray for judgment as more fully set forth below.
9

10 **PUNITIVE DAMAGES**

11 131. DEFENDANTS DR. FEATHERSTONE and DR. BAST'S acts, as alleged herein, as to
12 all causes of action, were intentional, outrageous, despicable, oppressive, fraudulent, and done
13 with ill will and intent to injure DR. SONG and MS. VALARIS and to cause them mental
14 anguish, anxiety, and distress. DEFENDANTS' acts were done in conscious disregard of the risk
15 of severe emotional harm to PLAINTIFFS and with the intent to injure, constituting oppression,
16 fraud, and malice under California Civil Code §3294, entitling PLAINTIFFS to punitive
17 damages against individual DEFENDANTS only.
18

19 **PRAYER FOR RELIEF**

20 132. Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS, and each of them
21 as follows:
22

- 23
- 24 1. For general damages in an amount according to proof;
 - 25 2. For special damages in an amount according to proof;
 - 26 3. For prejudgment interest in an amount according to proof;
 - 27 4. For reasonable attorney's fees and cost of suit therein required by statute;
- 28

1 5. For punitive damages in the amount of \$3,000,000.00 each as to DEFENDANT
2 DR. FEATHERSTONE and DEFENDANT DR. BAST, or 9% of the net worth of each
3 DEFENDANT, whichever is greater.

4 6. For statutory penalties and any other statutory relief;

5 7. For \$3,000,000.00 in compensatory damages, past and further, including physical
6 injuries creating mental and emotional misery;

7 8. For such other and further relief as the court may deem proper;

8 9. PLAINTIFFS hereby demand a trial by jury.

9
10 **JURY TRIAL DEMANDED**

11 DATED: May 20, 2019

RESPECTFULLY SUBMITTED
LAW OFFICES OF BONNER & BONNER

12
13 /s/ Charles A. Bonner
14 ATTORNEY FOR PLAINTIFFS